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April 11, 1994

93-21

William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Implementation of Section 26 of the Cable Television Consumer Protection
and Competition Act of 1992; Inquiry Into Sports Programming Migration;
PP Docket No. 93-21

Dear Mr. Caton:

These comments are submitted by the Major League Baseball Players Association, the labor union which represents all major league players, with respect to the Further Notice of Inquiry released by the Commission on 11 March 1994. These comments are limited to questions relating to Major League Baseball (MLB). For purposes of these remarks, I assume that the Commission is or will become familiar with (1) the terms of the joint venture between the 28 Major League teams, ABC and NBC, (2) the schedule of national over-the-air broadcast of regular season games, (3) the "regionalized" schedule of over-the-air broadcasts of the new Divisional Playoffs and the League Championship Series, and (4) MLB's new agreement with ESPN.

As an initial matter, we note that MLB's position evidently is that because of the Sports Broadcasting Act, and, moreover, due to its overall exemption from the antitrust laws, the 28 MLB teams may reach agreement with one another, two of the major networks (ABC and NBC), ESPN, and at least two superstations affiliated with MLB's teams (the Cubs and WGN, and the Braves and WTBS), divide the market for the broadcast of all games by this series of agreements, and their collective judgments in this regard are immune from scrutiny. Thus, the question of whether the antitrust laws would prohibit or limit such activity is, as MLB would interpret the law, irrelevant. Hence, the normal safeguards and protections provided to consumers by the antitrust laws in this area are not present.

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Accordingly, the MLBPA believes that MLB's exemption from the antitrust laws, at least as its scope is interpreted by baseball's owners, raises serious questions about the protection of the public interest in connection with the broadcast of baseball games in any form, i.e., free, over-the-air, cable, or pay cable, etc. For example, MLB has taken the position that, due to the exemption, its activities may not even be investigated by appropriate governmental agencies. (See the investigation initiated by Attorney General Blumenthal of Florida. This issue is now before the Florida Supreme Court.) The fact that MLB may, it believes, organize its broadcast of games (whether national or local, free-over-the air, cable or pay cable) entirely without regard to the antitrust laws or other public scrutiny, save an occasional inquiry such as this one, does not instill confidence that the public interest will be considered, much less protected. In short, the owners get to decide whether to serve the public interest, and, indeed, what that interest is.

Secondly, in the interim report, the Commission found that the decline in the number of nationally broadcast (over-the-air) regular season games "appears" to be due to declining ratings rather than any migration to cable. By its inquiry, the Congress has clearly indicated that it is concerned about access to sports programming for persons who do not have cable television. Yet the broadcast of the new Division Series will be "regionalized", as will the broadcast of the American League and Nation League Championship Series, which through 1993 were broadcast in their entirety nationwide. Such restrictions on the availability of games would be subject to review if the antitrust laws applied to baseball.

Finally, with respect to the Commission's request for information relating to sharing of revenue from local broadcasts between competing teams, we can offer no firm information. We do understand, however, that all of such arrangements are open for renegotiation within the next year. The Commission should request information from MLB relating to the status of these arrangements.

I thank the Commission for the opportunity to present these comments, and would welcome the opportunity to respond to any further questions that may arise.

Sincerely,

Major League Baseball
Players Association

Donald M. Fehr / g 77

Donald M. Fehr